

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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A.C. and H.C., by their Next Friend BARBARA
WEINER, individually and on behalf of all others
similarly situated,

Plaintiffs,

- against -

JOHN MATTINGLY, in his official capacity as
Commissioner of the New York City Administration
for Children's Services; and JOHN JOHNSON, in his
official capacity as Commissioner of the New York
State Office of Children and Family Services,

Defendants.

07 Civ. 3308 (TPG)(THK)
(ECF Case)

SUPPLEMENTAL
DECLARATION IN
SUPPORT OF PLAINTIFF
CHILDREN'S MOTION
FOR CLASS
CERTIFICATION

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THERESA B. MOSER declares as true under penalty of perjury, pursuant to 28
U.S.C. § 1746, that:

1. I am a staff attorney at the Legal Aid Society, Juvenile Rights Practice,
attorneys of record for the plaintiff children in this action.

2. I make this declaration in support of the children's motion to certify a
class of children defined as "all children in New York City who are now, were on or after
July 1, 2004, or will in the future be, residing in foster care with relatives who are within
the second or third degree of consanguinity of their parents or stepparents."

3. The class as defined above is so numerous that joinder of all members
would be impractical. The Preliminary City of New York *Mayor's Management Report*
for Fiscal Year 2007 (Preliminary 2007 MMR) reports that there were almost 17,000
children in foster care in New York City over the past year. Fully 30.8 percent of those
children – more than 5,000 – were residing with relatives. The percentage of children in

foster care with relatives was 19.4 in 2004, 21.4 in 2005, and 25.5 in 2006. The percentage of children placed with relatives continues to rise. An excerpt from the Preliminary 2007 MMR is attached hereto as Exhibit 3.¹

4. Although every member of plaintiffs' proposed class is at risk of removal from the home of a family member, even the subset of children who are actually removed from relatives each year alone would meet the numerosity requirement of Fed. R. Civ. P. Rule 23. New York State Office of Children and Family Services Special Hearings Bureau yearly reports (OCFS yearly reports) indicate that 71, 59, and 53 hearings to challenge removals of children from kinship and non-kinship foster homes were requested in 2004, 2005 and 2006 respectively. From 1993 to 2006, 1,041 such hearings were scheduled and 519 were held. Excerpts from OCFS yearly reports, Bates numbered OCFS-1249 to OCFS-1252, are attached hereto as Exhibit 4.

WHEREFORE, it is respectfully requested that this Court grant plaintiff children's motion for class certification.

I hereby declare that the foregoing is true and correct. Executed on September 14, 2007.

A handwritten signature in cursive script, appearing to read 'Theresa B. Moser', written over a horizontal line.

Theresa B. Moser (TM2125)

¹ See also the June 17, 2005, declaration of Jennifer Baum in Support of Plaintiff Children's motion for class certification with exhibits 1 and 2 (ECF # 5), which provides comparable data for FY2004 and FY 2005.